



### 3. RECESSES

From time to time during the trial we will take recesses. During the recesses you are to be governed by the following admonition:

"You are admonished that during this recess or any future break in the trial, you are not to discuss this case with anyone, or among yourselves, nor to form or express any opinion as to the innocence or guilt of the defendant until the matter is submitted to you. You are not to attempt to learn anything about this case outside this courtroom or visit any location mentioned in the trial. You are to avoid and disregard any media or other reports about the trial."

I also ask that you have no conversations at all with the attorneys, the witnesses, or the defendant. Please to not discuss this case or the law in general with the bailiff, the clerks or any of the persons involved with the trial as it progresses.

### 4. THE INFORMATION

The Defendant has been charged with the commission of a crime in a formal document called an Information. In a moment the clerk will read the Information in this case to you. Bear in mind that this is only an allegation to which the defendant has plead "Not Guilty." You may not consider the filing of the Information or the defendant's not guilty plea as evidence. You will hear the evidence from the witness stand and through any exhibits admitted during the trial.

(CLERK READS THE INFORMATION)

### 5. EVIDENCE AND STIPULATIONS

You are the exclusive judges of the facts, but you must determine the facts from the evidence produced here in court. If any evidence shall be ordered by me to be stricken, you must disregard it entirely.

No statement made by the attorneys should be regarded as evidence. However, if counsel for both parties stipulate or agree to any fact, you should regard that fact as being conclusively proven.

### 6. OPINION OF THE JUDGE

You are the sole judges of all questions of fact. You must decide such questions for yourselves from the evidence without regard to what you may believe I think about it. My opinion is immaterial. If any statement or ruling of mine seemed to indicate that I held an opinion of any fact, this was unintentional and you are instructed to disregard it.

(OPENING ARGUMENTS OF counsel)

## 7. NOTE TAKING

During this trial I will permit you to take notes. Many Courts do not permit note-taking by jurors, and a word of caution is in order. There is always a tendency to attach undue importance to matters which one has written down. Some testimony which is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

## 8. CONSIDERATION OF EVIDENCE

You should only consider evidence admitted by the court. You should not consider evidence which may be rejected, or speculate as to the reason for objections, or the court's ruling on them.

Where there is conflict in the evidence, you should reconcile such conflict if you reasonably can. But, where the conflict cannot be reasonably reconciled, you still must finally determine from the evidence what the ultimate facts are.

You are not bound to believe a witness unless that witness' testimony is reasonable in view of all the facts. You may believe one witness against many, or many witnesses against a few, in accordance with your honest convictions.

## 9. CREDIBILITY OF WITNESSES

In judging the credibility or believability of any witness, you should consider the witness' possible bias, possible interest in the result of the trial, and any possible motive the witness may have to testify in a particular way. You may consider the witness' demeanor on the witness stand, the reasonableness of the statements, opportunity to know, ability to understand and capacity to remember. You should also consider whether the witness gave self-contradicting testimony, or was contradicted by other evidence. From all this you should determine any witness' credibility, and what weight you should give the testimony. If you should believe that a witness has intentionally testified falsely as to any material fact, you may disregard all of that witness' testimony, or give it such weight as you think it is entitled.

## 10. PRESUMPTION OF INNOCENCE

A defendant in a criminal case is presumed to be innocent until and unless proven guilty beyond a reasonable doubt. The presumption of innocence follows the defendant throughout the trial until and unless the prosecution has met this burden. The presumption of innocence is a humane provision of the law, intended, so far as human agency is capable, to guard against the danger of an innocent person being unjustly punished. This presumption must continue to prevail in your minds as jurors until you are satisfied beyond a reasonable doubt of the guilt of the defendant.

### 10-A ELEMENTS AND DEFINITIONS OF OFFENSE

The parties to this case have agreed that the Court should assist you by giving some instructions now, that will be repeated at the conclusion of the evidence. As instructed before, you should not give any special weight to these instructions simply because they are repeated. The restating of these instructions is done solely to assist your focus during the presentation of the evidence. Again, you should consider the instructions as a whole, regardless of any repetition.

(TESTIMONY FROM WITNESSES)

11. REASONABLE DOUBT

The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find the defendant not guilty.

**INSTRUCTION NO. 12**

A defendant in a criminal case has an absolute right under our Constitution not to testify. The fact that a defendant did not testify must not be discussed or considered in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his right under the Constitution and did not testify.

### 13. ACT AND MENTAL STATE

In every crime there must be a joint operation of act and mental state. The mental state is manifested by the circumstances connected with the offense and the sound mind and discretion of the accused.

A person is guilty of an offense when the conduct is prohibited by law and the actor engages in the conduct with some kind of criminal mental state. That is to say the actor engages in the conduct intentionally, knowingly or recklessly with respect to each element of the offense as the definition of an offense requires.

Those terms are defined for you as follows:

A person engages in conduct "intentionally" or with intent, when it is the person's conscious objective or desire to engage in the conduct or cause the result.

A person engages in conduct "knowingly" or with knowledge, when the person is aware that the conduct is reasonably certain to cause the result.

A person engages in conduct "recklessly" with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

INSTRUCTION NO. 14-A

## ELEMENTS OF THE OFFENSE OF RAPE AS AN ACCOMPLICE

To convict Warren Jeffs as an accomplice to the crime of rape, you must find from the evidence, beyond a reasonable doubt, all of the following elements of that crime:

1. That the defendant, Warren Jeffs:
  - a. intentionally, knowingly, or recklessly solicited, requested, commanded, or encouraged another--
    - i. to have sexual intercourse
    - ii. with [REDACTED] without consent; or
  - b. intentionally aided another--
    - i. to have sexual intercourse
    - ii. with [REDACTED] without consent; and
2. Allen Steed had sexual intercourse with [REDACTED] without consent.

If you do not find from the evidence, beyond a reasonable doubt, all of the foregoing elements, you must find the defendant not guilty of rape as an accomplice.

The first count is alleged to have occurred between April 23, 2001 and May 12, 2001.

The second count is alleged to have occurred between May 13, 2001 and September 30,

2003.

**INSTRUCTION NO. 14-B**

**DEFINITION OF RAPE**

A person commits rape when the actor has sexual intercourse with another person without the other person's consent.

Intercourse without consent is all that is required for rape. Ignoring a person's "no," standing alone, may be sufficient for a conviction of rape, even without the use of threat or force. A person may commit rape whether or not the actor is married to the person.

INSTRUCTION NO. 14-C

**CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER**

Every person, acting with the mental state required for the commission of rape who directly commits the rape, who solicits, requests, commands, encourages, or intentionally aids another person to engage in sexual intercourse without consent shall be criminally liable as a party for the rape.

**INSTRUCTION NO. 14-D****LACK OF CONSENT**

An act of sexual intercourse is without consent of a person under any, all, or a combination of the following circumstances:

1. The person expresses lack of consent through words or conduct; or
2. The person was 14 years of age or older, but younger than 18 years of age, and the actor was more than three years older than the person and enticed the person to submit or participate; or
3. The person was younger than 18 years of age and at the time of the offense the actor occupied a position of special trust in relation to the person.

You may consider the totality of the facts and circumstances as presented to you in this trial in making your determination regarding lack of consent.

INSTRUCTION NO. 14-E

In order to find the victim's lack of consent because the victim is younger than 18 years of age and at the time of the offense that the Defendant occupied a position of "special trust" in relation to ██████████ you must be convinced that the State has proved beyond a reasonable doubt that the offense was committed by a person who occupied a position of special trust in relation to the victim.

"Position of special trust" means that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence over the victim, and includes, but is not limited to, a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, baby-sitter, adult scout leader, natural parent, stepparent, adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent.

INSTRUCTION NO. 14-F

In order to find that [REDACTED] was enticed the State must prove beyond a reasonable doubt that the defendant lured or induced a person to submit to or to participate in an act of sexual intercourse.

To "entice" consists of some acts or words intended to cause a person to do something the other person would not otherwise do. Entice includes the use of improper psychological manipulation to influence the will of a person or to persuade against the person's will or better judgment. Considerations of age, mental development, relationship to each other, sophistication or lack thereof and all other facts and circumstances shown by the evidence enter into a determination of whether a person was enticed.

"Entice" is not a word referring to approved conduct. It may mean seduce, or is synonymous with to lure, trap, or snare. In other words, to wrongfully solicit, persuade, procure, lure, attract, seduce, or persuade a person to submit to or to participate in an act of sexual intercourse. To entice as used in penal statutes may mean to inveigle, decoy, tempt, delude, to persuade against one's will or better judgment, or to draw into a situation by ruse or wiles.

INSTRUCTION NO. 14-G

With respect to the crime of rape, a 14-year old is capable of consenting to an act of sexual intercourse.

INSTRUCTION NO. 14-H

**ABSENCE OF OTHER PARTIES**

In any prosecution in which an actor's criminal responsibility is based on the conduct of another, it is no defense that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

INSTRUCTION NO. 14-I

**RELIGIOUS BELIEFS NO DEFENSE TO CRIMINAL ACTS**

The Constitution protects religious beliefs. But, people whose actions violate the laws regarding rape, consent, and accomplice liability are not excused from compliance with those laws because of their religious beliefs or opinions.

INSTRUCTION NO. 14-J

**NO LAWFUL MARRIAGE**

A lawful marriage cannot occur between first cousins or when one of the parties is younger than age fifteen.

INSTRUCTION NO. 14-K

A witness may be discredited or impeached by contradictory evidence, by a showing that he testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony.

If you believe any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you think it deserves.

**INSTRUCTION NO. 14-6**

The defendant is not charged with the crime of solemnizing an unlawful marriage.

### 15. TWO REASONABLE INTERPRETATIONS

If the evidence in this case is susceptible of two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the defendant, while the other points to innocence, it is your duty under the law to adopt the interpretation which will admit to the defendant's innocence and reject that which points to guilt.

You will note that this rule applies only when both of the possible opposing conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other to be unreasonable, it would be your duty to adhere to the reasonable conclusion and to reject the unreasonable. Bear in mind, however, that even if the reasonable deduction or conclusion points to the defendant's guilt, the entire proof must carry the convincing force required by law to support a verdict of guilty.

(CLOSING ARGUMENTS)

## 16. CONDUCT OF JURORS

Your verdict must express the individual opinion of each of you. It is rarely productive of good for a juror, upon entering the jury room, to make an emphatic expression of opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, your sense of pride may be aroused, and you may hesitate to recede from an announced position if shown that it is incorrect. When you have first reached a conclusion as to the guilt or innocence of the defendant, you should not lightly change it merely because other jurors may disagree with you. Discuss your opinions with open minds and if you are satisfied that your first conclusion was wrong, then you may change it. Remember that you are not partisans or advocates, but rather, judges.

## 17. JURY DELIBERATIONS

When you retire to deliberate, you should appoint one of yourselves to act as foreperson to preside over your deliberations and sign the verdict to which you all agree. The foreperson has no more power than any other juror. In this criminal case your verdict must be unanimous. Your verdict must be in writing and must be returned to the court.

A form of verdict has been prepared for your use in this case. Your foreperson will sign that verdict which correctly sets forth your decision. I will now read to you the verdict form.

It is not necessary for anyone other than the foreperson to sign your verdict. When you have arrived at a verdict, notify the bailiff, by knocking on the door to the jury room, that you are ready to report to the court

DATED this \_\_\_\_\_ day of September, 2007.

JAMES L. SHUMATE  
DISTRICT COURT JUDGE